**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**M.A.C.M.A. NO.167 OF 2011**

**JUDGMENT:**

The claimants who are none other than the wife, three major sons of deceased Deenabandu Sahu filed the claim petition O.P. No.420 of 2000 for the death of the deceased in motor accident dated 19.07.1996 due to rash and negligent driving of driver of the bus (bearing No.TN 25 C-5555) of 2nd respondent insured with 3rd respondent – National Insurance Company Limited, driven by 1st respondent, for claiming compensation of Rs.2,00,000/- (Rupees two lakhs only) since awarded only Rs.1,01,500/- (Rupees one lakh one thousand and five hundred only), having been aggrieved by the award of the tribunal, the appeal is filed for enhancement of compensation as prayed for and by allowing the claim petition filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*.

2. Heard Sri Aravala Rama Rao, learned counsel for the appellants. The respondent No.1-driver is not served saying not a necessary party to this appeal. The appeal claim against 2nd respondent owner of crime bus was even dismissed for default, the appeal is maintainable against the insurer of the crime vehicle whereas the owner was a party before the trial Court and thus the appeal is maintainable vide decision in ***Meka Chakra Rao v. Yelubandi Babu Rao***[1], thus the appeal is taken up for hearing. The 3rd respondent-insurer called absent having been served with notice failed to appear and represent, taken as heard the 3rd respondent for the absence to decide on merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3(a). The contentions in the grounds of appeal in the nutshell are that the amount awarded by the Tribunal is utterly low, unjust and unsustainable and hence to enhance the compensation as claimed for Rs.2,00,000/-.

4. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

**POINT-1:**

5. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that on 19.07.1996, the deceased Deenabandhu Sahu along with his son Syama Sahu and one Tirupati Patro who went to nearby town for taking Xerox copies of Intermediate certificates of Syama Sahu to seek admission into Degree College. Syama Sahu was driving Luna moped and the deceased along with Tirupati Patro were pillion riders, that when they reached near Chakkiregu junction, the bus (bearing No.TN 25-C-5555) came in opposite direction at high speed in rash and negligent manner dashed against the luna moped, as a result, the deceased along with Tirupati Patro died on the spot and Syama Sahu also later succumbed to the injuries. The police at Sompeta registered a case against the bus driver, which occurrence is proved by the evidence of PWs.1 and 2 read with Ex.A1 First Information Report in Cr.No.118 of 1996, Ex.A4 charge sheet and Ex.A2 MVI report. The tribunal after considering the evidence of PWs.1 and 2 coupled and Ex.A3, granted an amount of Rs.51,500/- with interest at the rate of 7 ½% interest against the respondents 1 to 3 are jointly and severally liable to pay the

compensation to the claimants.

6. Before coming to decide, what is just compensation in the factual matrix of the case, it is apt to mention the famous quote of **Lord Morris** that, perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. **Upjohn LJ in Charle red House Credit Vs Tolly**[2] remarked that the assessment of damages has never been an exact science and it is essentially practical. **Lord Morris in Parry Vs. Cleaver**[3] observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding the compensation in case of death for loss of dependency and estate to all claimants; care, guidance, love and affection especially to the children, consortium to the spouse, expenditure incurred for transport and funeral etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred for said injuries sustained from nature of treatment required. The appeal claim herein is thus confined to the

quantum from the contention of not correctly taken the multiplicand and multiplier with future prospects in earnings and on the quantum of consortium and funeral expenses etc., in arriving a sum for awarding just compensation.

7. In this regard, it is well laid down by the Apex Court (Three Judges Bench) in the latest expression in **Rajesh v. Rajbir Singh**[ at paragraph Nos. 1 and 7 referring to the earlier expressions in **Sarla Verma v Delhi Transport Corporation**[5] and **Nagappa v Gurudayal Singh**[6] that compensation which appears to it to be just, has to be assessed and awarded by the Tribunal set up under Section 166 of the Act. The expression 'just compensation' has been explained in **Sarla Verma`s case** (4$^{th}$cited supra) holding that the compensation awarded by the Tribunal does not become just compensation merely because the Tribunal considered it to be just. 'Just compensation' is an adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation.

8. From the above legal position, coming to the factual matrix of the case, the fact that the age of the deceased at the time of accident as per the material on record including from Ex.A3 Post Mortem Report, is about 60 years and for a person whose age between 61-65, the multiplier applicable is '7' as per Sarla Verma (supra), the earnings of the deceased is borewell digger at the time of accident in July, 1996 was rightly taken by the Tribunal at Rs.1500/- per month and from the cost of living indicates as on that day, for this Court there is practically nothing to abnormally increase, but for to make it Rs.1800/- per month and from his age about 60 years, the question of any addition to it in respect of prospective earnings does not arise and as dependants are

four in number, the personal expenses taken out of it is 1/4$^{th}$ then it comes to Rs.1350/- per month X 12 = Rs.16,200/- per annum X 7 (multiplier) = Rs.1,13,400/-, for loss of consortium though the latest Apex Court's expression (Rajesh's case) gives as Rs.1,00,000/- taking into consideration of the advanced age of the deceased and his wife, an amount of Rs.50,100/- is reasonable besides an amount of Rs.25,000/- towards funeral expenses and an amount of Rs.10,000/- towards loss of estate, in all comes to Rs.1,98,500/- as just compensation. Accordingly, point 1 for consideration is answered.

**POINT -2:**

9. Accordingly and in the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs.1,01,500/- to Rs.1,98,500/- with interest at the rate of 7½% per annum from the date of the claim petition till realization/deposit with notice. The rest of the amounts are directed to pay/ deposit after deducting of any amount if already deposited within one month, failing which the claimants can execute and recover. Out of the said compensation, the 1$^{st}$ claimant (wife of deceased) is entitled to half of the amount and the claimants 2 to 4, the major sons equally the remaining half. They are permitted to withdraw Rs.30,000/- each and rest of the amounts if any be invested in FDs separately for three years. There is no order as to costs in the appeal.

10. Miscellaneous petitions, pending if any in this appeal, shall stand closed.

**Dr. B. SIVA SANKARA RĀO,J**

Date: 06-12-2013

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Note: L.R. copy to be marked: Yes/No

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[1] 2001 (1) ALT 495 DB

[2] 1963(2) All.E.R-432

[3] 1969(1)A11.E.R –555

[4] 2013 ACJ 1403=(4)ALT-35(SC).

[5] 2009 ACJ 1298.

[6] 2003 ACJ 12.